

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Before the Board of Patent Appeals and Interferences

*image*  
AF 1771

In re Patent Application of

Atty Dkt. 4480-19

DRAKE

TC/A.U.: 1771

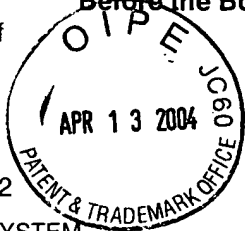
Serial No. 10/072,916

Examiner: Pratt

Filed: February 12, 2002

Date: April 13, 2004

Title: EASY RELEASE SYSTEM



**Mail Stop Appeal Brief - Patents**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**Correspondence Address Indication Form Attached.**

**NOTICE OF APPEAL**

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the Examiner. (\$ 330.00 )

\$

An appeal **BRIEF** is attached in triplicate in the pending appeal of the above-identified application (\$ 330.00)

\$ 330.00

Credit for fees paid in prior appeal without decision on merits

-\$ ( )

A reply brief is attached in triplicate under Rule 193(b)

(no fee)

Petition is hereby made to extend the current due date so as to cover the filing date of this paper and attachment(s) (\$110.00/1 month; \$420.00/2 months; \$950.00/3 months; \$1480.00/4 months)

\$

**SUBTOTAL** \$ 0.00

Applicant claims "Small entity" status, enter 1/2 of subtotal and subtract

-\$ ( )

"Small entity" statement attached.

**SUBTOTAL** \$ 0.00

Less month extension previously paid on

-\$ ( 0.00)

**TOTAL FEE ENCLOSED** \$ 330.00

Any future submission requiring an extension of time is hereby stated to include a petition for such time extension. The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

1100 North Glebe Road, 8<sup>th</sup> Floor  
Arlington, Virginia 22201-4714  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100  
RGB:cr

NIXON & VANDERHYE P.C.  
By Atty: Richard G. Besha, Reg. No. 22,770

Signature: Richard Besha

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of

**DRAKE**

Serial No. **10/072,916**

Filed: **February 12, 2002**

For: **EASY RELEASE SYSTEM**



Atty. Ref.: **4480-19**

TC/A.U.: **1771**

Examiner: **Pratt**

\*\*\*\*\*

**APPEAL BRIEF**

On Appeal From Group Art Unit 1771

Richard G. Basha  
**NIXON & VANDERHYE P.C.**  
8<sup>th</sup> Floor, 1100 North G Road  
Arlington, Virginia 22201-4714  
(703) 816-4024  
Attorney for Appellant



**TABLE OF CONTENTS**

I. REAL PARTY IN INTEREST ..... 1

II. RELATED APPEALS AND INTERFERENCES ..... 2

III. STATUS OF CLAIMS ..... 2

IV. STATUS OF AMENDMENTS ..... 2

V. SUMMARY OF THE INVENTION ..... 2

VI. ISSUES ..... 3

VII. GROUPING OF CLAIMS ..... 4

VIII. ARGUMENT ..... 4

    A. The Rejection of Claims 1-16 Under 35 U.S.C. §112, Paragraph 2... 4

    B. The Rejection of Claims 1 and 4 over Drake '430 or '387 in View of  
        Hamilton '400 ..... 6

    C. The Rejection of Claim 4 Based on Drake '430 or '387 in View of Hamilton  
        and Helbling..... 12

    D. The Rejection of Claims 15-16 Based on Drake '430 and '387 in View of  
        Hamilton and Admitted Prior Art ..... 13

IX. CONCLUSION..... 13

APPENDIX A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of  
DRAKE  
Serial No. 10/072,916  
Filed: February 12, 2002  
For: EASY RELEASE SYSTEM



Atty. Ref.: 4480-19  
Group: 1771  
Examiner: Pratt

\*\*\*\*\*

Date: April 13, 2004

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPEAL BRIEF**

Sir:

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the Examiner.

**REAL PARTY IN INTEREST**

The real party in interest in the above-identified appeal is Mohawk Brands, Inc., by virtue of an assignment of the application from Burlington Industries, Inc. dated November 10, 2003 and which assignment is in the process of being recorded. The parent U.S. Patent No. 6,457,961 likewise was assigned on the same date from Burlington Industries, Inc. to Mohawk Brands, Inc. and that assignment is similarly in the process of the being recorded. Consequently, legal title to the present application and the prior U.S. Patent No. 6,457,961 remain the same.

### **RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences known to appellant, appellant's legal representative or assignee which would directly affect or be directly affected by or have a bearing on the Board's decision in the appeal.

### **STATUS OF CLAIMS**

Claims 1-16 are pending and are the subject matter of this appeal.

### **STATUS OF AMENDMENTS**

An amendment to the claims was filed on September 16, 2003 effecting a change in independent claim 1. The Advisory Action of February 20, 2004 stated that the amendment would be entered upon filing this appeal.

### **SUMMARY OF INVENTION**

The invention relates to a flooring system wherein a new/replacement commercial carpet may installed in conjunction with removable material. The system enables installation of a fresh commercial carpet over removable material forming part of the flooring system such that the commercial carpet and removable material may be removed and a fresh commercial carpet and removable material may be installed.

More particularly, a first pressure sensitive adhesive 22 (p. 5, l. 7) is applied to a first flooring surface 21 which may be wood, carpet tile or vinyl tile or the like (p. 5, l. 5-6). A layer of non-woven material 23 is applied to the pressure sensitive adhesive (p. 5, l. 8-9). The layer of non-woven material provides a macroscopically smooth clean surface that is substantially impervious to moisture

(p. 4, l. 12-15). The pressure sensitive adhesive preferably has shredded fiberglass therein in about a 2-10% concentration (p. 5, l. 18).

Commercial carpeting 25 is then applied to the layer of non-woven material by applying a second layer of wet laid adhesive 24 directly to the non-woven layer 23 (p. 5, l. 9-11). Thus, new commercial carpeting is adhesively applied over the non-woven material. As a result of this flooring system, the commercial carpeting and the material enabling removal of the commercial carpeting, i.e., the non-woven layer and the pressure sensitive adhesive, are removable together to uncover the first flooring surface which can then be recarpeted. Consequently, commercial carpeting is readily and easily removable from a flooring surface, e.g. wood, tile or carpeted flooring surface, which can then be recarpeted.

### ISSUES

A. Are claims 1-16 indefinite under 35 U.S.C. §112, second paragraph, for failure to particularly point out and distinctly claim the subject matter which applicant regards as the invention?

B. Has the Examiner established a *prime facie* case of obviousness under 35 U.S.C. §103 of claims 1-3, 7-9 and 13 based on Drake U.S. Patent No. 5,849,387 or Drake U.S. Patent No. 5,658,430, each in view of Hamilton U.S. Patent No. 5,693,400?

C. Has the Examiner established a *prime facie* case of obviousness of claims 4-6, 10-12 and 14 under 35 U.S.C. §103 as unpatentable over Drake '430 or '387

in view of Hamilton '400 and further in view of Helbling U.S. Patent No. 4,857,566?

D. Has the Examiner established a *prima facie* case of obviousness of claims 15-16 under 35 U.S.C. §103 as unpatentable over Drake '430 or '387 in view of Hamilton and Applicant's Admitted Prior Art (APA)?

#### **GROUPING OF CLAIMS**

Claims 2, 3 and 5-14 stand or fall on the merits with claim 1. Separate arguments for patentability are presented with respect to claims 4, 15 and 16.

#### **ARGUMENT**

##### **A. The Rejection of Claims 1-16 Under 35 U.S.C. §112, Paragraph 2**

The Examiner contends the term "exclusive" in the last paragraph of independent claim 1 does not limit the metes and bounds of the claim and asks how "is the non-woven 'exclusive' when it is adhered to the carpeting"? Claim 1 requires the carpeting to be "exclusive of said layer of non-woven material". The term "carpeting" in the final paragraph of claim 1 refers to commercial carpeting. Commercial carpeting may include a tufted pile with a primary backing or a fusion bonded pile with a primary backing or any other type of carpeting. The "carpeting" of the final paragraph of claim 1 may include many different types of layers of materials including "non-woven" material. It may not, however, include the same "non-woven" material set forth in the third full paragraph of the claim, i.e. the layer on non-woven material. The phrase "carpeting exclusive of said layer of non-woven material" (claim 1, final paragraph) distinguishes between (i)

the latter commercial carpeting which may include multiple layers of different materials including non-woven material and (ii) the layer of non-woven material previously recited in the claim. That is, while the "layer of non-woven material" recited in the third full paragraph of claim 1 is part of the flooring system, it is not part of the "carpeting" set forth in the final paragraph of claim 1. It is an element separate from the "carpeting" of the last paragraph of claim 1.

As always, claims are read in the context of the invention as set forth in the application and particularly in the specification. It is quite clear that the non-woven material and the pressure sensitive adhesive form an intermediary between the floor surface and commercial carpeting adhered e.g. by a wet laid adhesive to the non-woven material. This enables the "carpeting" together with the non-woven material and PSA to be removed jointly from the flooring surface when the carpeting is worn. Thus, the carpeting, the adhered non-woven layer and the PSA can be readily removed from the floor surface as a result of the releasable nature of the PSA.

The Examiner apparently does not draw a distinction between the claimed "carpeting" and the removal system comprised of the non-woven layer and the PSA since the "carpeting" and the "removal system" are adhered to one another. While the "carpeting" and "removal system" are adhered to one another upon installation of the system, this does not mean that the recited non-woven material and PSA forming the "removal material" are part of the "carpeting" as claimed. In



fact, by using the phrase "carpeting exclusive of said layer of non-woven material" Appellant has clearly set forth that the "carpeting" and "removal system" are distinct elements of the claim. This is necessarily so since it is the "removal material" which enables the "carpeting" to be readily removed from the flooring surface so that a fresh or new carpet installation can be similarly secured to the flooring surface.

The Examiner in the Advisory Action comments that the "carpeting" and "removal material" when "combined" form the final product on which the claims are evaluated for purposes of patentability. Appellant does not disagree. However, the term "carpeting" is used in the claims to denote commercial carpeting in its fullest meaning, i.e., manufactured or finished carpeting ready for application to a substrate. The term "carpeting" does not refer to a layer or a part of otherwise complete carpeting. Claim 1 requires elements including the non-woven layer and the pressure sensitive adhesive in addition to the claimed carpeting.

**B. The Rejection of Claims 1 and 4 Over Drake '430 or '387 in View of Hamilton '400**

The following addresses only the Drake '387 patent since the two '430 and '387 Drake patents are identical one to the other insofar as their disclosure is concerned, and the comments with respect to one patent apply equally to the other patent.

As noted previously, the present claims are directed to a flooring system including removal material in conjunction with carpeting. The removal material

DRAKE

Serial No. 10/072,916

such as the claimed non-woven layer and pressure sensitive adhesive (PSA) lie intermediate the flooring surface and the carpeting. On one side of the system, the PSA releasably secures the removable material and ultimately the carpeting to the surface of the floor. On the opposite side of the removable material, specifically its non-woven layer, the second wet-laid adhesive secures the carpet to the non-woven layer. The system permits and enables commercial carpeting and the removal material to be readily and easily removed from the flooring surface for replacement by another floor covering.

Referring now to Drake '387, a new carpet is secured by a permanent adhesive to and overlying a worn carpet. The Examiner would modify the Drake carpet to include a non-woven layer and PSA "between the adhesive and flooring layers of Drake", presumably between adhesive 25 and the worn carpet 19. In Hamilton, yarn material in rope form is adhesively secured to a fiberglass mesh 36 and a non-woven glass fiber tissue sheet material 34 forming the primary backing. The carpet material may have a further backing or not. PSA may be applied to the back side of the primary backing comprised of a fiberglass mesh and the non-woven glass fiber tissue sheet, or the PSA may be applied to a further backing. The Hamilton carpet may be glued directly to the floor surface using the PSA or an additional secondary backing material may be applied during the manufacturing process in Hamilton with the PSA being applied to the secondary backing to hold the laminated carpeting to the floor's surface.

The Examiner in the Advisory Action states that the claim "requires a flooring system comprising a non-woven layer and a carpet layer". That statement however is not accurate. Claim 1 requires a non-woven material and PSA in conjunction with carpeting, not in conjunction with a carpet layer. That is, the claimed flooring system utilizes a finished carpet, i.e., the claimed "carpeting" of claim 1 (which is described in the specification as commercial carpeting) and then adds a totally separate and independent non-woven layer during the installation process as well as the PSA layer to facilitate the removal of the complete carpeting installation when the "carpeting" must be replaced. The claimed "carpeting" clearly excludes the claimed layer of non-woven material. Hamilton adhesively secures commercial carpeting to a floor surface without any intermediate layer of non-woven material and a PSA. Thus, the interpretation by the Examiner of the claimed "carpeting" as a "carpet layer" (as in the Advisory Action) improperly interprets the claimed subject matter.

Drake uses a permanent adhesive to secure one carpet layer in overlying relation to another carpet layer. In the first Action, which is incorporated by reference in the final rejection, the Examiner concludes the obviousness of inserting the "non-woven/PSA layer of Hamilton between the adhesive and flooring layers of Drake". In doing so, the Examiner selects out of the carpeting of Hamilton a non-woven primary backing which forms a necessary and integral part of the Hamilton carpeting and not only applies that Examiner selected

element to the Drake carpet but also applies the selected non-woven primary backing at a particular location. Manifestly there is no suggestion for this selection of materials from the Hamilton reference for insertion in the Drake carpet much less for insertion "between the adhesive and flooring layers of Drake" (p. 3, first Office Action). One predicate for the substitution by the Examiner is the "desire to increase the dimensional stability of Drake's system". That the Drake system requires or that it is desired to increase dimensional stability in the Drake system is not indicated anywhere in the Drake patent. The desire to provide increased cushioning stated as a reason a person skilled in the art would insert the non-woven/PSA layer of Hamilton between the adhesive and flooring layers of Drake would not, in any event, materially improve any desired cushioning.

Appellant notes that the primary backing layers 34 and 36 in Hamilton constitute components of the finished "carpeting" and those layers are necessarily supplied in Hamilton as an integral part of the finished carpeting during the manufacturing process. In contrast, the claimed non-woven layer is not part of the "carpeting". It is complete by itself, is independent of the claimed carpeting and forms, in conjunction with the carpeting, the finished flooring system. In short, the carpeting as claimed is a finished product without the claimed additional non-woven layer and PSA whereas in Hamilton the primary backing 34 or 36 forms only a part of the finished carpeting product. The

referenced PSA and backing layers 34 or 36 on the secondary backing (column 4, lines 61-63 of Hamilton) remain an integral part of the "carpeting" of Hamilton. The claimed non-woven and PSA are separate from the "carpeting", are an adjunct to a complete stand-alone carpeting and do not provide any function necessary to complete the "carpeting" as a finished stand-alone product as in Hamilton. Appellant submits a person of skill in the art would not recognize the non-woven material and the PSA, which form an integral part of the "carpeting" of Hamilton, as elements which can be removed from that carpeting and applied as separate and distinct elements to an additional or another carpeting, particularly where, as here, the PSA and non-woven material applied as additional elements to an otherwise complete or finished carpet. The result is a wholly different flooring system than either Drake or Hamilton conceive. In short, applying releasable adhesive i.e., PSA and a non-woven between two carpeting layers in Drake simply would not have been suggested to individuals of skill in the art from a review of Drake, and Hamilton. Drake permanently secures a carpet to an underlying carpet. Hamilton releasably secures a carpet to a floor surface using material integral to that carpet.

On page 4, lines 2-3 of the Final Rejection the Examiner references column 7, lines 48-49 stating that Hamilton teaches backing as a "separate" and "independent" layer from the carpet. The Examiner reads much more into the statement than the Examiner's comments support. A separate independent

backing as stated in Hamilton would comprise a carpet cushion which indeed would be separate and independent but does not correspond to the claimed non-woven material and PSA. The separate backing coating referenced at column 7, line 50, would form an integral part of the "carpeting" of Hamilton and does not suggest something independent of the carpeting itself.

In the first full paragraph on page 4, the Examiner states that Hamilton "teaches a carpet adhered to a non-woven via a wet laid adhesive. This is simply not so. Hamilton teaches yarns adhesively secured to a non-woven primary backing 34, 36. Neither the rope yarns, nor the adhesive 42, nor the primary backing 34, 36 form a "carpet." They form parts of a carpet but do not form "carpeting" as claimed. Consequently, Hamilton does not teach a "carpet" adhered to a non-woven via a wet laid adhesive.

The crux of claim 1 is that appellant is claiming carpeting (in the full meaning of the term and not simply just a layer of carpeting) in combination with separate elements, i.e., a non-woven layer with a certain type of adhesive on the floor side of the non-woven layer to form a flooring system. While appellant readily admits that the constituent elements set forth in claim 1 are known elements per se, there is absolutely no suggestion or teaching for combining those elements or ordering them in the manner claimed as a result of a review of the Drake and Hamilton patents. The non-woven primary backing 34, 36 of Hamilton is not separate and apart from the "carpet" of Hamilton but in

conjunction with the rope yarns forms the finished carpet. There is therefore no disclosure of "carpeting" in Hamilton which is adhered to a non-woven layer as claimed.

**C. The Rejection of Claim 4 Based on Drake '430 or '387 in View of Hamilton and Helbling**

Claim 4 requires in addition to claim 1 that the first adhesive, i.e. the PSA, include about 2-10% by weight shredded fiberglass. The Examiner finds response to that additional limitation in Helbling '566. Helbling relates to a lamination adhesive. Helbling does not state the adhesive to be a pressure sensitive adhesive. Helbling does state that the latex compound may be applied to carpet as a carpet backing. The latex adhesive also has fiberglass filler (column 5, lines 32-43). Since neither one of Drake nor Hamilton disclose a pressure sensitive adhesive with fiberglass in an amount of 2-10% by weight or in the same context of the claimed carpeting and removal system, appellant submits that the Examiner's selection of the fiber/glass adhesive of Helbling is a direct result of appellant's claimed subject matter particularly where there is not the hint of a suggestion of a "carpeting" utilizing PSA as part of an adhering medium for a removal system enabling carpeting to be readily removed from floor surfaces and replaced. That an adhesive with fiberglass fillers exists is insufficient as a teaching for the Examiner's selection and that such selection by the Examiner merely follows appellant's road map.

DRAKE

Serial No. 10/072,916

**D. The Rejection of Claims 15-16 Based on Drake '430 or '387 in View of Hamilton and Admitted Prior Art**

That a product named TEXTRON is commercially available does not *per se* suggest or teach the application of that commercially available product for use in the combination claimed, i.e. carpeting and a removal system. Appellant is the first to suggest stitching as a desirable constituent in the overall claimed construction. Likewise with respect to claim 16, appellant is the first to suggest in combination with the stitching that the non-woven material includes weft reinforcing threads extending transverse to the stitching. It is appellant who first conceived the claimed construction as including a non-woven material. That a particular suitable material is commercially sold under the trademark TEXTRON is not suggestive of use of that material *ab initio*.

**CONCLUSION**

In conclusion, appellant submits the Examiner's rejections are in error and should be reversed.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: Richard G. Besha  
Richard G. Besha  
Reg. No. 22,770

RGB:cr  
1100 North Glebe Road, 8th Floor  
Arlington, VA 22201-4714  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100



**APPENDIX**  
**CLAIMS ON APPEAL**

1. (Currently Amended) A flooring system comprising:  
a first flooring surface;  
a first pressure sensitive, adhesive substantially directly adhering to said first surface;  
a layer of non-woven material applied to said pressure sensitive adhesive and substantially directly adhered thereto and providing a surface substantially impervious to moisture;  
a second carpet installation adhesive applied to said layer of non-woven material on a side thereof opposite said first adhesive; and  
carpeting exclusive of said layer of non-woven material adhesively secured to said second adhesive.
2. (Original) A flooring system as recited in Claim 1 wherein said first flooring surface comprises wood, carpet tile, or vinyl tile.
3. (Original) A flooring system as recited in Claim 2 wherein said second adhesive comprises a wet laid adhesive.
4. (Original) A flooring system as recited in Claim 1 wherein said first adhesive includes about 2-10%, by weight, shredded fiberglass.
5. (Original) A flooring system as recited in Claim 4 wherein about 5-7% shredded fiberglass is provided.
6. (Original) A flooring system as recited in Claim 4 wherein said first adhesive is latex adhesive.
7. (Original) A flooring system as recited in Claim 1 wherein said first flooring surface comprises carpet tile.

8. (Original) A flooring system as recited in Claim 1 wherein said first flooring surface comprises vinyl tile.

9. (Original) A flooring system as recited in Claim 1 wherein said second adhesive comprises a wet laid adhesive.

10. (Original) A flooring system as recited in Claim 9 wherein said first adhesive includes about 2-10%, by weight, shredded fiberglass.

11. (Original) A flooring system as recited in Claim 10 wherein about 5-7% shredded fiberglass is provided.

12. (Original) A flooring system as recited in Claim 1 wherein said first adhesive is latex adhesive.

13. (Original) A flooring system as recited in Claim 12 wherein said first flooring surface comprises wood, carpet tile, or vinyl tile.

14. (Original) A flooring system as recited in Claim 8 wherein said first adhesive includes about 5-7%, by weight, shredded fiberglass.

15. (Previously Presented) A flooring system as recited in Claim 1 wherein said layer of non-woven material includes stitching.

16. (Previously Presented) A flooring system as recited in Claim 15 wherein said layer of non-woven material includes weft reinforcing threads extending generally transverse to said stitching.